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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
In re

Chapter 11

LEHMAN BROTHERS HOLDINGS INC., et al.,

Case No. 08-13555 (jmp)

(Jointly Administered)

Debtors.
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**THE UNITED STATES OF AMERICA’S LIMITED OBJECTION
TO DEBTORS’ THIRD AMENDED JOINT CHAPTER 11 PLAN**

The United States of America (the “Government”), by its attorney Preet Bharara, United States Attorney for the Southern District of New York, respectfully submits this limited objection to confirmation of the Third Amended Joint Chapter 11 Plan of Lehman Brothers Holdings Inc. and Its Affiliated Debtors (the “Plan”), dated August 31, 2011 [Dkt No. 19627].¹

In the Plan, Lehman Brothers Holdings Inc. and its affiliated debtors (the “Debtors”) seek to release numerous companies and individuals – including the Debtors’ attorneys – from any

¹ The Government has filed proofs of claim in these cases, including claims for significant tax liabilities.

liabilities (other than those resulting from fraud or willful misconduct) that they may have to third parties, including the Government, as a result of conduct during this bankruptcy. They further seek to release nearly one hundred fifty creditor companies, and untold professionals and individuals associated with those companies, from any such liabilities they may have to third parties as a result of their conduct in the Plan process. The Court should reject these proposed releases as not authorized by the Bankruptcy Code and applicable case law and as extending beyond the jurisdiction of this Court.²

BACKGROUND

1. At various times between September 15, 2008, and December 22, 2009, the Debtors filed voluntary petitions for relief under Chapter 11, Title 11 of the United States Code, 11 U.S.C. § 1101 et seq., as amended (the “Bankruptcy Code”).

2. On September 1, 2011, the Debtors filed their proposed Plan, and the Court issued an order setting a November 4, 2011 deadline for objections to the Plan [Dkt. No. 19631].

3. On October 25, 2011, the Debtors filed a Plan Supplement [Dkt No. 21254].

4. By virtue of Sections 13.3 and 13.5 of the Plan, which cross reference the definitions of Released Parties and PSA Creditors contained in Sections 1.131 and 1.136, the Plan purports to relieve what may be more than two hundred parties from potential liabilities they may owe to third parties as a result of conduct during the bankruptcy.

² The Government is in the process of negotiating with Debtors regarding changes to certain other Plan language. These additional matters appear capable of negotiated resolution in the near future. To allow time to complete those negotiations and obviate the need for briefing of these additional matters, Debtors have agreed to extend the Government’s time to object to the Plan on issues other than those addressed herein.

5. Specifically, Section 13.3 provides as follows:

Release and Exculpation. On and after the Effective Date, the Debtors and all entities who have held, hold or may hold Claims against or Equity Interests in any or all of the Debtors (whether proof of such Claims or Equity Interests has been filed or not), along with their respective present or former employees, agents, officers, directors or principals, shall be deemed to have released

(a) the Released Parties from, and none of the Released Parties shall have or incur any liability for, any Claim for, Cause of Action for or other assertion of liability for any act taken or omitted to be taken during the Chapter 11 Cases in connection with, or arising out of, the Chapter 11 Cases, the negotiation, formulation, dissemination, confirmation, consummation or administration of the Plan, property to be distributed under the Plan or any other act or omission in connection with the Chapter 11 Cases, the Plan, the Disclosure Statement, the Plan Support Agreements or any contract, instrument, document or other agreement related thereto and

(b) the PSA Creditors from, and none of the PSA Creditors shall have or incur any liability for, any Claim for, Cause of Action for or other assertion of liability for any act taken or omitted to be taken in connection with, or arising out of, the negotiation, formulation, dissemination or confirmation, consummation or administration of the Plan, or any other act or omission in connection with the Plan, the Disclosure Statement, the Plan Support Agreements, including the filing of any alternative chapter 11 plan and any determination to not pursue solicitation or confirmation of such alternative plan, or any contract, instrument, document or other agreement related thereto;

provided, however, that (i) in no event shall any Litigation Claim, Cause of Action or other Claim or assertion of liability against any Released Party or PSA Creditor for any act taken or omitted to be taken prior to the Commencement Date be released by the Plan, (ii) nothing herein shall affect or release any obligation of the Debtors under the Plan, and (iii) nothing herein shall affect the liability of any person that otherwise would result from any such act or omission to the extent such act or omission is determined by a Final Order to have constituted willful misconduct or gross negligence; provided, further, that nothing in this Plan shall limit the liability of the professionals of the Debtors, the Creditors' Committee or the PSA Creditors to their respective clients pursuant to Rule 1.8(h)(1) of the New York Rules of Professional Conduct.³

³ For readability, the Government has re-formatted the block of text that is Section 13.3.

6. Thus, Section 13.3 contains two separate categories of release and exculpation, which boiled down to their essence are the following:

A. “Released Parties” are protected from any post-petition liabilities (other than those involving willful misconduct, fraud and, in some cases, professional malpractice) to the extent that such liabilities result, under applicable law, from “any act taken or omitted to be taken during the Chapter 11 Cases in connection with, or arising out of, the Chapter 11 Cases,” and

B. “PSA Creditors” are protected from “any liability” (again, other than liability involving willful misconduct, fraud and, in some cases, professional malpractice) “for any act taken or omitted to be taken in connection with, or arising out of, the negotiation, formulation, dissemination or confirmation, consummation or administration of the Plan, or any other act or omission in connection with the Plan, the Disclosure Statement, the Plan Support Agreements. . . .”

7. The “Released Parties” are a broad but ill-defined group of insiders involved in the Debtors’ restructuring process. As defined in Section 1.136:

Released Parties means, collectively, and in each case, solely in such capacity, the Debtors, the Independent Directors, the Plan Administrator, the Creditors’ Committee, each current and former member of the Creditors’ Committee and, with respect to each of the foregoing, their respective officers, directors, managers, members, accountants, financial advisors, investment bankers, agents, restructuring advisors, attorneys, representatives or other professionals serving during the pendency of the Chapter 11 Cases (solely in their capacity as officers, directors, managers, members, accountants, financial advisors, investment bankers, agents, restructuring advisors, attorneys, representatives or other professionals serving during the pendency of the Chapter 11 Cases).

8. Although it is impossible to identify every specific entity and individual that would be receiving protection as a “Released Party,” it appears that the list includes the following:

- a. All *directors* of any of the Debtors;
- b. All *officers* of any of the Debtors;
- c. All *managers* of any of the Debtors;
- d. All “*members*” of any of the Debtors that are LLCs or similar entities;
- e. All *accountants* for the Debtors;
- f. *Weil Gotshal & Manges, LLP*, counsel for the Debtors, and its individual attorneys representing the Debtors;
- g. *Curtis, Mallet-Prevost, Colt & Mosle LLP*, counsel for the Debtors, and individual attorneys representing the Debtors;
- h. *Jones Day*, counsel for the Debtors, and its individual attorneys representing the Debtors;
- i. *Kasowitz, Benson, Torres & Friedman, LLP*, and its individual attorneys representing the Debtors;
- j. *Kramer Levin Naftalis & Frankel LLP*, and its individual attorneys representing the Debtors;
- k. *Reilly Pozner LLP*, and its individual attorneys representing the Debtors;⁴
- l. Debtors’ restructuring firm *Alvarez & Marsal North America, LLC*;
- m. Debtors’ investment banker *Lazard Freres & Co. LLC*;
- n. All other “*agents*,” “*attorneys*,” “*financial advisors*,” “*representatives*” and “*professionals*” of the Debtors;

⁴ The Government lists here only the law firms appearing at the top of the Court’s docket. Filings indicate that numerous other law firms already represent the Debtors and, presumably, would claim to be covered by these releases.

- o. The *Committee of Unsecured Creditors* (“UCC”);
 - p. *Milbank, Tweed, Hadley & McCloy LLP*, counsel for the UCC, and its individual attorneys representing the UCC;
 - q. *Quinn Emanuel Urquhart Oliver & Hedges LLP*, counsel for the UCC, and its individual attorneys representing the UCC;
 - r. The UCC’s investment banker *Houlihan Lokey Howard & Zukin Capital, Inc.*;
 - s. All other “agents,” “attorneys,” “financial advisors,” “representatives” and “professionals” of the UCC;
 - t. The *Bank of NY Mellon*, a UCC member, and its officers, directors, managers, members, accountants, financial advisors, investment bankers, agents, restructuring advisors, attorneys, representatives and other professionals;
 - u. *Elliott Management Corp.*, a UCC member, and its officers, directors, managers, members, accountants, financial advisors, investment bankers, agents, restructuring advisors, attorneys, representatives and other professionals;
 - v. *Metlife*, a UCC member, and its officers, directors, managers, members, accountants, financial advisors, investment bankers, agents, restructuring advisors, attorneys, representatives and other professionals;
 - w. *Mizuho Corporate Bank, Ltd.*, a UCC member, and its officers, directors, managers, members, accountants, financial advisors, investment bankers, agents, restructuring advisors, attorneys, representatives or other professionals;
 - x. *U.S. Bank N.A.*, a UCC member, and its officers, directors, managers, members, accountants, financial advisors, investment bankers, agents, restructuring advisors, attorneys, representatives or other professionals;
 - y. *The Vanguard Group Inc.*, a UCC member, and its officers, directors, managers, members, accountants, financial advisors, investment bankers, agents, restructuring advisors, attorneys, representatives or other professionals; and
 - z. *Wilmington Trust Company*, a UCC member, and its officers, directors, managers, members, accountants, financial advisors, investment bankers, agents, restructuring advisors, attorneys, representatives or other professionals.
9. The term “PSA Creditor” covers an even broader group of entities than the term

“Released Parties.” As defined Section 1.131:

PSA Creditor means any Creditor⁵ identified on Schedule 4 (as the same may be amended from time to time) that is a party to a Plan Support Agreement with the Debtors that has not been terminated, and the Ad Hoc Group of Lehman Brothers Creditors, and each former, current and future member thereof that executes a Plan Support Agreement prior to the hearing to consider approval of the Disclosure Statement, and each of its officers, directors, managers, members, accountants, financial advisors, investment bankers, agents, restructuring advisors, attorneys, representatives or other professionals serving during the pendency of the Chapter 11 Cases (solely in their capacity as officers, directors, managers, members, accountants, financial advisors, investment bankers, agents, restructuring advisors, attorneys, representatives or other professionals serving during the pendency of the Chapter 11 Cases).

10. Schedule 4 to the Plan (as provided in the Plan Supplement, filed October 25, 2011), lists *one hundred forty-three* separate corporate entities as “PSA Creditors” entitled to releases. (Dkt. No. 21254, at 982-84).⁶ For the convenience of the Court, a list of these one hundred forty-three creditors is attached hereto as Exhibit A. Additionally, pursuant to Section 1.131, the PSA Creditor releases would extend to the unnamed “officers, directors, managers, members, accountants, financial advisors, investment bankers, agents, restructuring advisors, attorneys, representatives or other professionals” of each of these one hundred forty-three entities.

11. As to the Released Parties (but not the PSA Creditors), the Plan buttresses the release and exculpation provisions of Section 13.3 with an injunction contained in Section 13.5.

⁵ The Plan gives the term “Creditor” the meaning provided by Section 101(10) of the Bankruptcy Code. *See* Plan § 1.36.

⁶ The body of Schedule 4 enumerates 73 covered entities, but the footnotes to Schedule 4 explain that two of the listed creditors are actually aggregate references to a total of 64 separate creditors. Additionally, a third listed creditor – “Lehman Brothers Singapore Entities” – is defined under the Plan as an aggregate term referring to 10 separate creditors.

The injunction purports to bar conduct that non-debtors might potentially take “with respect to any Claims and Causes of Action which are extinguished or released pursuant to the Plan.”⁷

ARGUMENT
THE PLAN’S NON-DEBTOR RELEASES ARE IMPERMISSIBLY BROAD

12. The Plan’s non-debtor releases (and its corresponding exculpation and injunction provisions) should be rejected both because this case does not present the special circumstances that might possibly support non-debtor such releases under the Second Circuit *Metromedia* decision,⁸ and because the releases contained in the Plan extend beyond this Court’s jurisdiction.

A. *Metromedia* Requires Rejection of These Non-Debtor Releases

13. In *Metromedia*, the Second Circuit concluded that “[a] nondebtor release in a plan of reorganization should not be approved absent the finding that *truly unusual circumstances render the release terms important to success of the plan.*” *Metromedia*, 416 F.3d at 143 (emphasis added). The Court noted that whether such “truly unusual circumstances” exist requires a Court to focus on the following “considerations,” *id.*: (1) whether “the estate received substantial consideration” for the release, *id.* at 142; (2) whether “the enjoined claims were ‘channeled’ to a settlement fund rather than extinguished,” *id.* at 142; (3) whether “the enjoined claims would indirectly impact the debtor’s reorganization by way of ‘indemnity or

⁷ The Plan also contains a provision, Section 13.6, designed to address certain of the Government’s concerns about overbreadth in the Plan’s release, exculpation, discharge, and injunction provisions by making certain aspects of those provisions inapplicable to the Government. Other than by narrowing the injunction provision applicable to non-debtors to protect the Government’s right to pursue post-Effective Date police or regulatory actions against them, this section does not address non-debtor releases.

⁸ *Deutsche Bank AG v. Metromedia Fiber Network, Inc. (In re Metromedia Fiber Network, Inc.)*, 416 F.3d 136 (2d Cir. 2005).

contribution,” *id.*; and whether “the plan otherwise provided for the full payment of the enjoined claims,” *id.* The Court emphasized, however, that third-party releases may only be approved “in rare cases,” *id.* at 141, and that a prerequisite for non-debtor releases is a “finding of circumstances that may be characterized as unique,” *id.* at 142. *See generally, e.g., In re Adelphia Communications Corp.*, 368 B.R. 140, 266 (Bankr. S.D.N.Y. 2007) (observing that *Metromedia* “now limits the use of third-party releases to situations that can be regarded as unique”), *appeal dismissed*, 361 B.R. 337 (S.D.N.Y. 2007) and 371 B.R. 660 (S.D.N.Y. 2007), *dismissal of appeal affirmed*, 544 F.3d 420 (2d Cir. 2008).

14. The Plan’s non-debtor releases simply cannot be justified under the *Metromedia* standard. The non-debtors included with the definition of “Released Parties” and the “PSA Creditors,” taken together, fall into three broad categories of entities and individuals: (i) professionals, including attorneys, of the Debtors and the UCC; (ii) creditors (both on and off the UCC) and their officers, directors, and other agents, and (iii) the Debtors’ officers, directors and other agents. Although the Government does not doubt that some of these parties have exerted significant efforts to bring about the Plan, none of these released entities have had an involvement that can be fairly described as “unique” such that it would satisfy the *Metromedia* test.

15. To start with, the attorneys, financial advisors, accountants and other professionals that have provided services to the Debtors, the UCC, and the creditors cannot be given non-debtor releases simply for performing the services that those professionals were engaged to perform. As Judge Gerber has explained:

[M]any players in the bankruptcy process provide benefits to the case. DIP lenders are certainly in this category, and so are professionals to the estate or its fiduciaries. But they get interest and fees for their services. Their delivery of services is not unique.

In re Adelpia Communications Corp. 368 B.R. 140, 267-68 (Bankr. S.D.N.Y. 2007). Because of the size and complexity of the cases, the Government has no doubt that some of these professionals have put forth a significant effort and assumes that they have done so with a high degree of professional skill. But they will be paid with sums commensurate to the work. *See, e.g.*, Dkt. No. 19269 (Eighth Interim Fee Application of Weil, Gotshal & Manges LLP, seeking in excess of \$40 million in fees and expenses for the period February 1, 2011, through May 31, 2011); Dkt. No. 21247 (Twelfth Quarterly Report of Compensation for Alvaraz and Marsal North America, LLC, reporting fees and expenses paid to Alvaraz and Marsal between June 1, 2011, and August 31, 2011, in excess of \$27 million).

16. The creditors in this case, and their officers, directors, and agents, have also not made a “unique” contribution to the bankruptcy estate. As the *Adelpia* court explained:

In the case of creditors, even those that are Settling Parties, they were merely striking the kinds of deals with respect to their shares of the pie that chapter 11 contemplates. I don’t doubt that in this case the Settling Parties engaged, as the Plan Proponents argue, in “tireless efforts” to come together to work out a global compromise aimed at resolving these cases. But that’s not unique. It’s something creditors have to do in every chapter 11 case, at the risk of destroying themselves (or their recoveries in the case) with their own quests for incremental recoveries.

In re Adelpia Communications Corp., 368 B.R. at 268; *In re Chemtura Corp.*, 439 B.R. 561, 611 (S.D.N.Y. 2010) (“[The parties] have made what in substance was the same argument I considered and rejected in *Adelpia*—that they should get [non-debtor releases] because of the benefits of the settlement, supposedly extraordinary efforts in reaching a deal, or give-ups as part of that deal. Here, as in *Adelpia*, what we saw was simply what chapter 11 contemplates.”).

Unlike in *Charter Communications*, where the Court approved non-debtor releases demanded by an individual and his affiliates who made available “uniquely personal structuring benefits [where] no other party could stand in their shoes and achieve the same result,” *In re Charter Communications*, 419 B.R. 221, 259 (Bankr. S.D.N.Y. 2009), *appeal dismissed*, 449 B.R. 14 (S.D.N.Y. 2011), the creditors in the present case play no such unique role. The proper reward for the creditors’ efforts in the Plan process or the bankruptcy case is a Plan that maximizes their return or otherwise satisfies the requirements of the Code; it is not a release from potential liabilities owed to a third party.

17. Similarly, the releases granted to the Debtors’ directors, officers, and other agents are equally inappropriate. All of these individuals are compensated for their work, which, however important in these cases, is the same type of work that directors, officers and other agents of a debtor typically perform in other Chapter 11 cases. Although the Debtors’ by-laws do provide certain indemnifications that may cover some of these individuals under particular circumstances,⁹ there is nothing about these indemnifications that amounts to “truly unusual circumstances [that] render the release terms important to success of the plan.” *Metromedia*, 416 F.3d at 143.¹⁰ Accordingly, unlike in *Charter Communications*, 419 B.R. at 259, where the Court noted that indemnification provisions provided additional support for releases that were

⁹ See, e.g., Plan Supplement, Dkt No. 21254, at 20-23.

¹⁰ Moreover, these indemnifications do not clearly apply to activity during the bankruptcy case, have various restrictions and limitation that are not tracked in the releases, do not contain any limitation to prevent Debtors from modifying the indemnifications in the future, and, necessarily, will not extend past Debtors’ liquidation. See, e.g., Plan Supplement, Dkt No. 21254, at 20-23.

otherwise justified by the “unique” contribution by a third-party, here the element of “unique circumstances” cannot be met.

18. The Court should reject the arguments that Debtors are likely to make in support of their non-debtor releases. First, although the Debtors are likely to argue that these non-debtor releases need not be scrutinized by the Court because they cover only post-petition activity, courts have squarely held that non-debtor releases are subject to the same *Metromedia* test regardless whether they relate to pre-petition or post-petition conduct. As the *Adelphia* Court held:

[T]hough without question it has long been the custom in the bankruptcy community to make distinctions between releases involving pre- and postpetition conduct, . . . after *Metromedia*, limitation to postpetition events, by itself, is insufficient to justify a third-party release.

In re Adelphia Communications Corp., 368 B.R. at 267; accord *In re Motors Liquidation Co.*, 447 B.R. 198, 220 (Bankr. S.D.N.Y. 2011) (holding that “the limitations on third-party releases apply to both pre- and post-petition events”). Indeed, “every chapter 11 case, large or small, has a postpetition period. That is hardly unique.” *In re Adelphia Communications Corp.*, 368 B.R. at 267.

19. Second, the Debtors may contend that non-debtor releases are needed to avoid disruptive post-Effective Date litigation concerning actions taken during the bankruptcy. But such disputes, although unfortunate, are not extraordinary:

[M]any large chapter 11 cases, though thankfully not all of them, have intercreditor bickering and threats, aimed at each other and at debtor board members and management, that give the targets of those threats a legitimate fear that they will be sued. But unfortunately, that can’t be said to be unique, either.

In re Adelpia Communications Corp., 368 B.R. at 267; *In re Motors Liquidation Co.*, 447 B.R. at 221 (“I well recognize how hard the Debtors, the Chapter 11 Fiduciaries, and their professionals worked on this case, and how, with thousands of disappointed creditors and stockholders out there to second guess their actions, they would like to be protected for their good faith actions in maximizing value and bringing this case to a successful conclusion. But I’m constrained by existing law to place some limits on their protection.”). The desire to avoid litigation does not support non-debtor releases under the *Metromedia* test.

20. Third, the Debtors may suggest that the limitation of their releases in the case of fraud, willful misconduct, and in some cases professional malpractice supports approval. It is true that, in the absence of such a carve-out, the releases would be extraordinarily abusive. Nevertheless, even with such a carve-out, non-debtor releases must be scrutinized under *Metromedia* and should be rejected if the circumstances justifying them are less than “unique.” *In re Motors Liquidation Co.*, 447 B.R. at 220 (non-debtor release rejected by court despite including carveout language for “willful misconduct, gross negligence, fraud, malpractice, criminal conduct, unauthorized use of confidential information that causes damages, breach of fiduciary duty (to the extent applicable), and ultra vires acts,” as well as for certain violations of professional responsibility); *In re Adelpia Communications Corp.*, 368 B.R. at 264 n.21 (non-debtor releases rejected by *Adelpia* court included carve-out for “fraud or willful misconduct”).

21. Finally, Debtors may argue that the non-debtor releases provided to the PSA Creditors (and perhaps the “Released Parties” who are creditors) should be permitted because those creditors have made their approval of the Plan contingent on the inclusion of such non-

debtor releases. The Court should reject this argument, which is inconsistent with *Metromedia*'s holding that non-debtor releases are permitted only in "rare cases." As the *Adelphia* Court held:

Nor can I accept the notion that the releases pass muster under *Metromedia* because the Settling Parties elected to make them an element of their deal. . . . It would set the law on its head if parties could get around it by making a third party release a *sine qua non* of their deal, to establish a foundation for an argument that the injunction is essential to the reorganization, or even 'an important part' of the reorganization.

In re Adelphia Communications Corp., 368 B.R. at 269.

22. Accordingly, under *Metromedia*, the Plan's non-debtor releases are improper and should not be approved.

B. The Court Lacks Jurisdiction to Grant the Third-Party Releases

23. Separate from the *Metromedia* test, a bankruptcy court's authority to issue non-debtor releases is limited by the scope of the Court's jurisdiction. "[A] bankruptcy court only has jurisdiction to enjoin third-party non-debtor claims that directly address the *res* of the bankruptcy estate." *In re Johns-Manville Corp.* ("Manville"), 517 F.3d 52 (2d Cir. 2008), *rev'd on other grounds sub nom. Travelers Indem. Co. v. Bailey*, 129 S. Ct. 2195 (2009), *jurisdictional holding reaffirmed on remand, In re Johns-Manville Corp.*, 600 F.3d 135, 158 (2d Cir. 2010); *see also In re Metcalfe & Mansfield Alternative Investments*, 421 B.R. 685, 695 (Bankr. S.D.N.Y. 2010) (noting "jurisdictional limits *Manville* imposes on a bankruptcy court"). Where parties "make no claim against an asset of the bankruptcy estate, nor do their actions affect the estate," bankruptcy courts lack jurisdiction to enjoin a claim. *Manville*, 517 F.3d at 65; *see In re Dreier LLP*, 429 B.R. 112, 133 (Bankr. S.D.N.Y. 2010) (no jurisdiction to enjoin matter that does "not affect property of the estate or the administration of the estate"). In this analysis, "[t]he question is not whether the court has jurisdiction over the settlement [containing the non-

debtor releases] but whether it has jurisdiction over the attempts to enjoin the creditors' unasserted claims against the third party." *In re Dreier LLP*, 429 B.R. at 132.

24. Here, the non-debtor releases on their face cover potential claims by creditors against third parties that relate neither to the property of the estate nor the administration of the estate. The non-debtor releases for the Released Parties cover liabilities arising from "any act taken or omitted to be taken during the Chapter 11 Cases in connection with, or arising out of, the Chapter 11 Cases," regardless of whether enforcement of those liabilities would affect the estate's property or administration. The non-debtor releases for the PSA Creditors similarly cover liabilities arising from any act taken or omitted to be taken in connection with, or arising out of" the Plan process. These releases – both for the Released Parties and for the PSA Creditors – could cover a broad swath of potential government claims unrelated to the estate's property or administration, including actions by the Government for tax or environmental liabilities resulting from the covered acts or omissions actions and actions for breach of contract by one of the Released Parties or PSA Creditors.¹¹

25. Aside from this general limitation on the Court's jurisdiction to enjoin third-party claims, particular claims of interest to the Government are subject to subject to jurisdictional limitations. For example, courts lack authority under most circumstances to "restrain[] the assessment or collection of any tax," 26 U.S.C. § 7421, and the grant of authority in 11 U.S.C. § 505 for this Court to determine tax liability is limited only to debtors' tax liability, *see Brandt-*

¹¹ The Government does not, at this time, assert that such liabilities do exist. Congress, however, has provided the Government with three years to assess taxes, 26 U.S.C. § 6501(a), and six years to bring action for breach of contract, 28 U.S.C. § 2415(a). There is no authority for the Plan to impose what is essentially a bar date for third party claims, requiring the Government to enumerate at confirmation the specific claims against non-debtors that the releases will bar.

Airflex Corp. v. Long Island Trust Co. (In re Brandt-Airflex Corp.), 843 F.2d 90, 96 (2d Cir. 1988) (holding that 11 U.S.C. § 505 does not apply to the tax liability of non-debtors). Likewise, environmental laws limit judicial jurisdiction over various matters. *See* 42 U.S.C. § 9613(h) (depriving courts of jurisdiction over pre-enforcement environmental disputes). The Court should not approve non-debtor releases that reach to cover matters beyond its jurisdiction.

CONCLUSION

26. For the foregoing reasons, the Government respectfully objects to the Plan, and requests that the Court not approve the Plan to the extent that it seeks to release and exculpate parties other than the Debtors from potential liabilities, or to enjoin actions with respect to such liabilities.

27. To address these improper Plan provisions, the Government respectfully requests that the Court strike the language providing for non-debtor releases, exculpations, and injunctions from the Plan, and add the following additional language to the Plan or Confirmation Order:

Limitation on Release, Exculpation, and Injunction. Notwithstanding anything to the contrary in the Plan and Confirmation Order, nothing in the Plan or Confirmation Order shall (i) effect a release of any liability owed by a person or entity other than a Debtor, (ii) exculpate any a person or entity other than a Debtor from any liability, or (iii) enjoin any person or entity from bringing any claim, suit, action or other proceeding of any kind, or taking any other step described in Section 13.5 of the Plan, against a person or entity other than a Debtor.

Dated: November 4, 2011
New York, New York

Respectfully submitted,

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EXHIBIT A

(LIST OF PSA CREDITORS AS OF 10/25/2011)

1. Acenden Limited (f/k/a Capstone Mortgage Services Limited);
2. Angelo, Gordon & Co., L.P.
3. Bank of America, N.A., as successor in interest to Merrill Lynch Bank USA
4. Bank of America, N.A.
5. Barclays Bank S.A.
6. Barclays Bank PLC
7. Blue I Real Estate Limited
8. BNP Paribas
9. Bundesverband deutscher Banken e.V.
10. Canyon Capital Advisors LLC
11. CarVal Investors UK Limited
12. Cherry Tree Mortgages Limited
13. Contrarian Capital Management LLC
14. County of San Mateo
15. Credit Suisse AG
16. Credit Suisse Securities (Europe) Limited
17. Credit Suisse Loan Funding LLC

18. Cyrus Capital Partners, L.P.
19. D. E. Shaw Composite Portfolios, L.L.C.
20. D. E. Shaw Laminar Portfolios, L.L.C.
21. D. E. Shaw Oculus Portfolios, L.L.C.
22. D. E. Shaw Valence Portfolios, L.L.C.
23. D. E. Shaw Claims SPV, L.L.C.
24. Davidson Kempner Capital Management LLC
25. DB Energy Trading LLC
26. Deutsche Bank AG
27. Deutsche Bundesbank
28. Eldon Street (Colbert Orco) Limited
29. Eldon Street (Cube) Limited
30. Eldon Street (Harley) Limited
31. Eldon Street Holdings Limited
32. Eldon Street (Jefferson) Limited
33. Eldon Street (Raven) Limited
34. Eldon Street (Fidenza) Limited
35. Eldon Street (Birchin) Limited
36. Elliott Management Corporation

37. Elliott International, L.P.
38. Elliott Associates, L.P.
39. Entschädigungseinrichtung deutscher Banken GmbH
40. Fir Tree, Inc.
41. GLG Ore Hill LLC
42. Goldentree Asset Management, LP
43. Goldman Sachs International
44. Goldman Sachs Bank USA
45. Grace Hotels Limited
46. Gruss Asset Management, L.P.
47. Harley Property Ventures Limited
48. Hayman Capital Master Fund, L.P.
49. Hercules K.K.
50. Hong Kong Lehman Entities In Liquidation
51. King Street Capital Management GP, L.L.C.
52. Knighthead Capital Management, L.L.C.
53. LB RE Financing No. 3 Limited
54. LB Lomond Investments
55. LB Yellow (No. 1) Limited

- 56. LB Holdings Intermediate 2 Limited
- 57. LB SF No. 1
- 58. LB UK Financing Ltd
- 59. LB Holdings Intermediate 1 Limited
- 60. LB SF Warehouse Limited
- 61. LB UK Re Holdings Limited; Storm Funding Limited
- 62. LBO Investments Limited
- 63. LBQ Funding (UK)
- 64. Lehman Brothers International (Europe)
- 65. Lehman Brothers Bangkok
- 66. Lehman Brothers Europe Limited
- 67. Lehman Brothers UK Holdings Limited
- 68. Lehman Brothers Singapore Pte. Ltd.
- 69. Lehman Brothers Securities Taiwan Limited
- 70. Lehman Brothers Pte Ltd
- 71. Lehman Brothers Lease & Finance No. 1 Limited
- 72. Lehman Brothers Finance Asia Pte. Ltd. (In Creditors' Voluntary Liquidation)
- 73. Lehman Brothers Commodities Pte. Ltd. (In Creditors' Voluntary Liquidation)
- 74. Lehman Commercial Mortgage Conduit Limited

75. Lehman Brothers Holdings PLC
76. Lehman Brothers (PTG) Limited
77. Lehman Brothers Pacific Holdings Pte. Ltd. (In Creditors' Voluntary Liquidation);
78. Lehman Brothers Asia Pacific (Singapore) Pte. Ltd. (In Creditors' Voluntary Liquidation)
79. Lehman Brothers Real Estate Limited
80. Lehman Brothers Japan Inc.
81. Lehman Brothers Finance (Japan) Inc.
82. Lehman Brothers Equity (Nominees Number 7) Limited
83. Lehman Brothers Commercial Mortgage K.K.
84. Lehman Brothers Treasury Co. B.V.
85. Lehman Brothers (Indonesia) Limited
86. Lehman Brothers Securities N.V.
87. Lehman Brothers Investments Pte Ltd (In Creditors' Voluntary Liquidation)
88. Lehman Brothers Limited
89. Lehman Brothers (Luxembourg) S.A. (in liquidation)
90. Lehman Brothers (Luxembourg) Equity Finance S.A. (en faillite)
91. Lehman Brothers Bankhaus AG (in Insolvenz)
92. Lehman Brothers Holdings Japan Inc.

93. Mable Commercial Funding Limited
94. MBAM Investor Limited
95. Merrill Lynch International
96. Merrill Lynch International Bank Ltd.
97. Merrill Lynch Commodities Inc.
98. Merrill Lynch Capital Services Inc.
99. Merrill Lynch Commodities (Europe) Ltd
100. Merrill Lynch Bank & Trust Co. FSB
101. Monaco NPL (No. 1) Limited
102. Morgan Stanley Capital Group Inc.
103. Morgan Stanley Capital Services LLC
104. Morgan Stanley & Co. International PLC
105. Mount Kellett Master Fund II, L.P.
106. Myra Sarl
107. Oak Tree Capital Management, L.P.
108. Och-Ziff Capital Management Group LLC
109. Parkmetro Limited
110. Paulson & Co. Inc.
111. Platform Home Mortgage Securities No. 4 Limited

- 112. Platform Commercial Mortgage Limited
- 113. Preferred Group Limited
- 114. Preferred Holdings Limited
- 115. Preferred Mortgages Limited
- 116. Resetfan Limited
- 117. Riverside Development Pte. Ltd..
- 118. Silver Point Capital, L.P.
- 119. SM Funding No. 1 Limited
- 120. Societe Generale
- 121. Societe Generale Bank and Trust
- 122. Societe Generale Asset Management Banque
- 123. Southern Pacific Mortgage Ltd.
- 124. Southern Pacific Residuals 4 Limited
- 125. Southern Pacific Personal Loans Limited
- 126. Southern Pacific Funding 3 Ltd.
- 127. State Street Bank and Trust Company
- 128. State of California Public Employees' Retirement System
- 129. Stepstone Mortgage Funding Limited
- 130. Sunrise Finance Co. Ltd.

- 131. Taconic Capital Advisors L.P.
- 132. Thayer Properties Limited
- 133. Thayer Group Limited
- 134. Thayer Properties (Jersey) Limited (in liquidation)
- 135. The Liverpool Limited Partnership
- 136. The Baupost Group, L.L.C.
- 137. The Royal Bank of Scotland plc
- 138. UBS AG
- 139. Vallejo Sanitation and Flood Control District
- 140. Varde Partners, L.P.
- 141. Yellow Real Estate Limited
- 142. York Capital Management Global Advisors, LLC
- 143. Zestdew Limited